Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal-State Joint Board on Universal Service;	)	CC Docket No. 96-45
Forward-Looking Mechanism for High Cost Support for Non-Rural LECs	)	CC Docket No. 97-160

COMMENTS OF VIRGIN ISLANDS TELEPHONE CORPORATION

The Virgin Islands Telephone Corporation ("Vitelco") hereby submits these comments in response to the Commission's *Input FNPRM* seeking comment on specific issues associated with the implementation of the model the Commission has designed to be used with the high cost federal Universal Service program for non-rural local exchange carriers ("LECs").[1] To the extent that these proceedings set the stage for the development of policies and models to be applied to rural carriers, Vitelco urges the Commission not to apply the policies and procedures it adopts in this proceeding to rural carriers. Rather, Vitelco urges the Commission to await the findings of the Rural Task Force, which the Commission itself formed, before taking any definitive action. The application of some of the policies and procedures in this proceeding to rural and insular carriers could fail to ensure that carriers serving rural and insular areas receive sufficient

[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket 97-160, *Further Notice of Proposed Rulemaking*, FCC 99-120 (rel. May 28, 1999) ("*Input FNPRM*").

universal service support to maintain affordable telephone service as required by Section 254 of the Communications Act.[2] On the other hand, Vitelco applauds the Commission's proposal in the *Input FNPRM* to eliminate the annual certification requirements for rural carriers as a correct and proper step.

I. INTRODUCTION

On May 8, 1997, the Commission issued its *Universal Service Order*[3] which, among other things, set the stage for the adoption of plans and procedures to make the universal service support system an "explicit, competitively neutral" support system.[4] As part of its proposed modifications to the existing universal service program, the Commission determined that the level of universal service support would "be based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the services supported by the federal universal service support mechanisms."[5] After reviewing a number of different proposed models, the Commission adopted a forward-looking model to be used for non-rural carriers that combined elements from each of the proposed models.[6] The present *Input FNPRM* requests comment on the input values to be used with the Commission's model.

The Commission has also recognized that its actions, in addition to making federal support explicit, must also guarantee that the federal support system will "ensure the delivery of

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2 47 U.S.C. § 254.

3 *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 (1997) (Report and Order) ("*Universal Service Order*").

4 *Input FNPRM*, ¶ 1.

5 *Id.*

6 *Id.*, ¶ 9 (citing *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 21323 (1998) (Fifth Report & Order)).

affordable telecommunications service to all Americans."[7] Therefore, the Commission's revision of the universal service support system must, nevertheless, guarantee that it will provide the necessary support to carriers so that they can provide affordable services to their customers in high cost areas. No group of citizens should be left out, no matter where they live.

II. DISCUSSION

A. The FCC Must Not Assume that the Proposed Cost Model Will Accurately Model Those Costs Faced By Rural and, Particularly, Insular Carriers.

The Commission has acknowledged its obligation to ensure that *all* Americans enjoy the right to affordable telecommunications services in *all* areas of the country and its territories, especially insular areas.[8] Thus, the FCC must not assume that its proposed cost model will accurately reflect the costs of providing service in all parts of the states and territories, such as the U.S. Virgin Islands. Given the unique factors that increase the cost of providing service in the U.S.V.I., Vitelco is particularly concerned that the Commission revisit its adoption of a singular forward-looking model for nationwide application for non-rural carriers when the Commission turns to rural and insular carriers.

Given the nature of the traditional, wireline telecommunications network, the effects of a service area's geography cannot be understated. As the Commission describes in the *Input FNPRM*,[9] in order for a customer to connect to any other customer, that customer must be

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7 *Input FNPRM*, ¶ 1.

8 *See* 47 U.S.C. § 254(b)(3) (including the term "insular" to the group of areas targeted by universal service). Congress intended for the Commission to consider consumers in insular areas, such as the Virgin Islands, when developing support mechanisms for consumer access to telecommunications and information services. *See* H.R. Rep. No. 104-458, at 131 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 142.

9 *See Input FNPRM*, ¶¶ 11-15.

connected to the network. A customer is tied into the network via outside plant, which is all of the wires, cables and other equipment that link the customer to a central office. The importance of geography comes into play because geography, and the geographic obstacles that must be overcome, greatly influence the cost of linking a customer to the network. Thus, while the Commission has expressly stated that customer location is important to determining costs,[10] the geographic surroundings in which that customer resides also plays a critical role in determining those same costs.

As Vitelco has stated in previous universal service proceedings,[11] its service area presents unique geographic and demographic challenges that increase the cost of providing service in its service area. For example, frequent tropical storms and hurricanes (including the recent devastation by Hurricanes Marilyn, Bertha, and Georges) can unexpectedly destroy large parts of the telecommunications infrastructure requiring expensive repair and replacement. Also, the fact that Vitelco's service area is divided by water raises the cost of bringing services to customers. Additionally, costs on the Islands spiral upward because equipment that is used to link customers to the network must be routinely replaced due to the extreme weather conditions including heat, corrosive salt air and wind damage. This combination of conditions is not faced by any mainland carrier.

Further, the geology and topography make it expensive to provide service in this area. Because part of the islands were formed from a volcano, the Islands' are largely volcanic rock and their topography is irregular and mountain-like. This makes every aspect of the provision of

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10 *Input FNPRM*, ¶ 23.

11 *See, e.g.*, Comments of the Virgin Islands Telephone Corporation, CC Docket 96-45, DA (Continued...)

telephone service including construction, ongoing maintenance, and access to outside plant extremely difficult. For instance, steep terrain and volcanic rock require additional guying and anchoring. Finally, the U.S. Virgin Islands is a completely isolated territory. The Virgin Islands are located in the middle of the Caribbean Sea some 1200 miles off the coast of Florida. Because the U.S. Virgin Islands are not accessible through the efficient transportation networks that exist on the mainland, any manpower, equipment, and materials necessary for the provisioning of service must be shipped into the territory at a much higher cost. Unfortunately, these costs are recurrent because the Islands do not have a production-based economy. In fact, Congress recognized the unique cost conditions of insular areas when it enacted the 1996 Act.[12]

Thus, Vitelco is not as confident as the Commission that the use of nationwide input values "generally are more appropriate than company-specific values."[13] Further, when applying the model and its inputs to derive the costs faced by insular carriers, the Commission is dealing with an unknown quantity. The model has not been tested using data from the U.S. Virgin Islands, understandably, because the Commission is concentrating on non-rural carriers in this proceeding. However, it appears that the Commission has not yet tested the model with respect to another nearby major insular territory, Puerto Rico, given the apparent fact that the existing geocode data used to test the model did not include that for Puerto Rico.[14] Given these facts,

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98-2410, at 5-6 (filed Dec. 23, 1998).

[12] Congress intended for the Commission to consider consumers in insular areas, such as the Virgin Islands, when developing support mechanisms for consumer access to telecommunications and information services. H.R. Rep. No. 104-458, at 131 (1996).

[13] *Input FNPRM*, ¶ 22.

[14] *See Input FNPRM*, ¶ 31 (noting that the released road surrogate point data did not include (Continued...)

Vitelco cautions the Commission that it is critical that the Agency maintain an open mind when it turns to the task of designing a model to be used to determine the costs facing rural and insular carriers to provide service in their territories.

B. Elimination of the Annual Certification Requirement for Rural Carriers Is a Correct and Justified Deregulatory Step.

The Commission has often recognized its overarching obligation under the Telecommunications Act of 1996 to "provide for a pro-competitive, deregulatory national policy framework" for the telecommunications industry.[15] One way for the Commission to advance this policy is for it to eliminate unneeded and unnecessary regulatory obligations on telecommunications carriers. Presently, all carriers that had certified with the Commission that they are rural carriers are required to file a certification letter each year to recertify their status as a rural carrier.[16] In the *Input FNPRM*, the Commission proposes to eliminate the annual certification requirement for rural carriers who serve less than 100,000 access lines unless their status has changed.[17] Vitelco applauds the Commission in this effort to eliminate unnecessary paperwork.

As the Commission points out, an annual certification requirement is not needed or necessary because the Commission can easily verify access line counts with publicly-available

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Puerto Rico); *see also, id.*, ¶ 34 (noting that "the *new* release [of geocode data] will include data for all fifty states, Washington, D.C., and Puerto Rico") (emphasis added).

15 H.R. Rep. No. 104-458, at 113 (1996).

16 *See Universal Service Order*, 12 FCC Rcd at 8943-44.

17 *Input FNPRM*, ¶ 246.

data.[18] In addition, elimination of this requirement will avoid an unnecessary expenditure of resources. Requiring the approximately 1,400 certified rural carriers to file certification letters each year with the Commission would involve the expenditure of significant carrier and Commission resources due to the preparation, filing, and compilation of this large number of filings. Further, carriers would be required to expend additional resources to add this requirement to the myriad of other reporting requirements to which they are now subject.[19] Finally, the Commission would likely face additional petitions from carriers, weighed down by their other reporting requirements, requesting waivers to allow late filed certification letters. Thus, as the Commission appropriately notes, "this relaxation in filing requirements would lessen the burden on many rural carriers and Commission staff."[20]

Vitelco enthusiastically supports the Commission's proposal to eliminate the unneeded and unnecessary annual reporting requirement. The FCC should take advantage of all opportunities to relieve rural carriers of administrative burdens. In so doing, the Commission will be advancing Congress' deregulatory goals and reducing the regulatory costs that face rural carriers.

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18 *Id.*

19 For instance, rural carriers are required to collect and report data for the telecommunications relay services fund, the North American Numbering Plan Administration fund, annual income reports in accordance with Part 43 (if they meet the income threshold), and file forms associated with the payment of annual regulatory fees. 47 C.F.R. § 43. In addition, the administration of the universal service fund also generates its share of forms, fees, and information requirements.

20 *Input FNPRM*, ¶ 246.

C. The FCC Cannot Redefine the Rural Telephone Company Term "Local Exchange Operating Entity" To Include Their Holding Companies

Vitelco urges the Commission not to redefine the term "local exchange operating entity" to mean a holding company. As the Commission is well aware,[21] an "operating company" and a "holding company" are not interchangeable terms – they each have a very specific legal meaning and significance. In fact, Congress itself recognized this distinction when it defined "Bell *operating* company." The section of the Act defining that term does not list Ameritech Corporation or Bell Atlantic Corporation as operating entities, but rather it lists Illinois Bell Telephone Company and The Bell Telephone Company of Pennsylvania, among others, as the operating entities.[22] On the other hand, when Congress meant to include a holding company in a definition, it has done it as well. In Section 522(2), Congress captures the holding company in its definition of 'affiliate' when it defines the term as "another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person."[23]

Had Congress meant the term "local exchange operating entity" to mean holding company in Section 153(37), it would have used that term or included the term 'affiliate' within the definition. Further, the fact that the Iowa Utilities Board failed to make this distinction does not justify the redefinition of a plain language term that Congress has implicitly defined in other sections of the Act. The Commission must continue to define the term "local exchange operating entity" as an entity operating at the study area level.

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21 *See, e.g., International Telecharge, Inc. v. Southwestern Bell Tele. Co.,* 11 FCC Rcd 10061, 10077 (1996) (distinguishing between local exchange carrier and holding company as a defendant in a formal complaint).

22 *See* 47 U.S.C. § 153(4).

23 47 U.S.C. § 522(2).

III. CONCLUSION

Vitelco urges the FCC to be circumspect in its application of the practices and procedures it develops and applies in the context of the non-rural carriers to rural and insular carriers. There are critical differences between these types of carriers that necessarily affect the level of support these carriers require to bring affordable services to all of their customers. The Commission has an obligation to guarantee that these carriers can do so. Vitelco supports the Commission's moves to reduce the regulatory burdens faced by rural and insular carriers. Thus, in the *Input FNPRM*, Vitelco agrees with the Commission's finding that it does not need to require annual certification of rural status by carriers and that elimination of this requirement will save both the FCC and the industry the resources they could otherwise use to advance universal service.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that the preceding document was delivered by hand (except as otherwise indicated) to the persons listed below.

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